

COPY

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9 WENDY'S INTERNATIONAL, INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 ELLIOTT LEWIS, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 WENDY'S INTERNATIONAL, INC.,
17 a Corporation; and DOES 1 through
18 20, inclusive,

19 Defendants.

CV09-07193 MMM (JCx)

Case No. _____

NOTICE OF REMOVAL OF CIVIL
ACTION FROM STATE COURT

[28 U.S.C. §§ 1332, 1441(b) and
1446]

FILED
2009 OCT -2 PM 12:13
U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

1 TO THE CLERK OF THE ABOVE ENTITLED COURT:

2 PLEASE TAKE NOTICE THAT WENDY'S INTERNATIONAL, INC.
3 (herein "Wendy's" or "Defendant" or "Defendant Wendy's"), defendant in the action
4 entitled *Elliott Lewis, an individual, on behalf of himself, and all others similarly*
5 *situated, v. Wendy's International, Inc., a Corporation, and DOES 1-20*, Case No.
6 BC 420922, filed in the Superior Court of the State of California, for the County of
7 Los Angeles, has removed that action to the United States District Court for the
8 Central District of California pursuant to 28 U.S.C. § 1332, § 1441, and § 1446. The
9 grounds for removal are as follows:

10 **Compliance with Statutory Requirements**

11 1. On or about August 31, 2009, Plaintiff Elliott Lewis ("Plaintiff")
12 commenced this action by filing a Class Action Complaint in the Superior Court of
13 the State of California for the County of Los Angeles, Case No. BC 420922,
14 captioned *Elliott Lewis, an individual, on behalf of himself, and all others similarly*
15 *situated, v. Wendy's International, Inc., a Corporation, and DOES 1-20* (herein "the
16 Action"). Plaintiff alleges claims for premium wages for alleged missed meal and
17 rest periods (California Labor § 226.7), penalties for alleged missed meal and rest
18 periods (California Labor Code § 558), actual damages or penalties for failure to
19 include premium pay for alleged missed meal and rest periods in itemized wage
20 statements (California Labor Code § 226), waiting time penalties for failure to pay
21 premium wages due for alleged missed meal and rest periods at the time of
22 termination (California Labor Code §201-203), and restitution for alleged violation
23 of California's Unfair Competition Law (Cal. Business and Professions Code §
24 17200, *et seq.*). Plaintiff seeks, on behalf of himself and those similarly situated,
25 recovery of unpaid wages, restitution, penalties, damages, injunctive relief, pre-
26 judgment interest, "post-judgment" interest, costs and attorney's fees.

1 2. Defendant was served with the Class Action Complaint in this action
2 on September 3, 2009. Removal of the Action is timely because it is within 30 days
3 of service of the Complaint on Defendant. *See* 28 U.S.C. §1446(b).

4 3. In accordance with 28 U.S.C. § 1446(a), true and correct copies of the
5 Summons, Class Action Complaint, and Civil Case Cover Sheet are attached hereto
6 as Exhibit A. Defendant has not served or been served with any other process,
7 pleadings, or orders in this action.

8 4. Pursuant to 28 U.S.C. § 1446(d), Defendant promptly will provide
9 written notice of removal of the Action to Plaintiff, and promptly will file a copy of
10 this Notice of Removal with the Clerk of the Superior Court of the State of
11 California, County of Los Angeles.

12 **Intradistrict Assignment**

13 5. Plaintiff filed this case in the Superior Court of California, County of
14 Los Angeles. Therefore, this case may properly be removed to the Western Division
15 of the Central District of California. 28 U.S.C. § 1441(a).

16 **Jurisdiction**

17 6. This Court has original jurisdiction over this matter pursuant to 28
18 U.S.C. § 1332(d) (as amended by the Class Action Fairness Act of 2005, Pub. L. No.
19 109-2, 119 Stat. 14 ("CAFA")). Under Section 1332(d), federal courts have original
20 diversity jurisdiction over a class action whenever "any member of a [putative] class
21 of plaintiffs is a citizen of a State different from any defendant" (28 U.S.C.
22 § 1332(d)(2)(A)) and "the matter in controversy exceeds the sum or value of
23 \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2). Both
24 requirements are satisfied here because the matter in controversy, in the aggregate,
25 exceeds the sum of \$5,000,000, exclusive of interest and costs and there is diversity
26 of citizenship between Plaintiff and Defendant.

27 **Diversity of Citizenship**

28 7. The parties to this action are citizens of different states.

1 8. Plaintiff alleges that at all times material to the claims he advances,
2 and at the time of the filing of his complaint, he was resident of Los Angeles County,
3 California. He also alleges that he was previously employed by Wendy's at a
4 restaurant located in Beaumont, California. Defendant avers that Plaintiff was, and
5 still is, a citizen of the State of California.

6 9. Defendant Wendy's is a corporation incorporated under the laws of the
7 State of Ohio and no other state. Pursuant to the test set out in *Indus. Tectonics, Inc.*
8 *v. Aero Alloy*, 912 F.2d 1090, 1094 (9th Cir. 1990), the "principal place of business"
9 of Defendant Wendy's is in a state other than the State of California, that is, in the
10 State of Ohio.

11 10. Wendy's principal place of business cannot be California. Wendy's is
12 incorporated in the State of Ohio, with operating facilities in 30 states. California is
13 not the one State where Wendy's activities predominate. Of all domestic company-
14 owned stores, only 4.5% are found in the State of California. Of all domestic
15 company employees, just 4.1% are employed in California. Of all domestic net
16 sales, less than 6% are derived from California operations. Further, each of the
17 States of Florida, Ohio and Texas have significantly greater levels of activity than
18 California, in each of the following categories: number of company owned
19 restaurants, number of employees, revenue, number of franchise stores. Florida has
20 more the three times as many company-owned restaurants, employees and net sales,
21 as compared to California. Ohio has significantly more company-owned restaurants,
22 employees and net sales, as compared to California. Texas too has substantially
23 greater company-owned restaurants, employees and net sales, as compared to
24 California.

25 11. Where no one state contains a substantial predominance of the
26 corporation's business activities,¹ the "nerve center" test applies.² Under the nerve

27 ¹ Even in the face of large-scale California operations, other district courts
28 have declined to hold that California is a corporation's principal place of business,
where those operations do not clearly dominate operations in other states. *See e.g.*

center test, a corporation's principal place of business is the state in which it performs its executive and administrative functions.³

12. Wendy's executive and administrative functions are primarily carried out in the State of Ohio with some operations in Georgia, not in California. Most of Wendy's executives and high level managers are housed at its corporate headquarters in Ohio, or in Georgia, not in California.

13. Applying the above facts to the place of operations test, it is impossible to conclude that California could be the principal place of business of Wendy's. The substantial predominance of Wendy's business activities do not take place in the state of California. And applying the nerve center test, the State of Ohio – home of Wendy's corporate headquarters – is Wendy's principal place of business.⁴

(continued...)

Ho v. Ikon Office Solutions, Inc., 143 F. Supp. 2d 1163 (N.D. Cal. 2001) (concluding that the defendant's principal place of business was not California – even though it had the greatest number of employees in California – because no single state had more than 10% of its workforce, no single state generated more than 10% of its annual revenue, and its administrative and executive functions took place elsewhere); *Arellano v. Home Depot U.S.A., Inc.*, 245 F. Supp. 2d 1102, 1106-08 (S.D. Cal. 2003) (finding that Home Depot's operations in 49 states, property in several states, and executive offices in Georgia counseled against finding California the principal place of business).

² See *Indus. Tectonics*, 912 F.2d at 1093-94 (nerve center test applies "where a corporation conducts business in many states, and does not conduct a substantial predominance of its business in any single state").

³ *United Computer Systems*, 298 F.3d at 763 ("if the corporation's activities are not predominant in a single state, then the principal place of business is where the majority of its executive and administrative functions are performed"); *Indus. Tectonics*, 912 F.2d at 1093 ("courts generally assign greater importance to the corporate headquarters where no state is clearly the center of corporate activity").

⁴ Compare *Arellano*, 245 F. Supp. 2d at 1108 (applying nerve center test to conclude Home Depot's principal place of business located in Georgia, where the corporate offices were located); *Ho, supra*, 143 F. Supp. 2d at 1168 (applying nerve center test and holding Ikon's principal place of business located in Pennsylvania, where the corporate offices were located).

14. The Action is therefore brought between citizens of different states under the definition of 28 U.S.C. § 1332. Furthermore, the minimal diversity required under 28 U.S.C. § 1332(d)(2) also exists for purposes of this Court's exercise of diversity jurisdiction under CAFA.

Amount in Controversy

15. The Class Action Complaint satisfies the amount in controversy requirement for class actions set forth in 28 U.S.C. § 1332(d) (as amended). Section 1332(d)(6) provides that "[i]n any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs." Though Defendant concedes no liability on Plaintiff's claims, and does not concede the propriety or breadth of the class as alleged by Plaintiff, Plaintiff's Complaint places in controversy⁵ a sum greater than \$5,000,000.

16. Plaintiff purports to represent a class consisting of individuals who were non-exempt employees of Defendant in the State of California at any time after four years preceding the filing of the Action, and who were not provided a meal or rest period during certain time periods through the day. In this regard, Plaintiff alleges that Wendy's has a "consistent policy" of failing to provide employees meal and rest periods to which they are entitled, and a "requirement that plaintiffs [sic] and the class work through meal and rest periods without paying legal compensation...." (Complaint ¶18, 19.)

⁵ The amount in controversy includes claims for general and special damages, excluding costs and interest; penalties; attorneys fees, if recoverable by statute or contract; and punitive damages, if recoverable as a matter of law. *See, e.g., Richmond v. Allstate Ins. Co.*, 897 F. Supp. 447 (S.D. Cal. 1995); *Miller v. Michigan Millers Ins. Co.*, 1997 WL 136242 (N.D. Cal., 1997); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1009 (N.D. Cal. 2002) (holding that civil penalty properly included in the amount in controversy); 28 U.S.C. Section 1332(d)-(e), 1453, 1711-1715 (2005).

17. Premium Wages per Labor Code § 226.7. The Plaintiff alleges a "consistent policy" and "requirement" that meal and rest periods be missed. Assuming the truth of that allegation, and assuming one missed meal or rest period per shift worker during the class period, the amount in controversy on this claim would be as follows. During the time period in question, on any given day, approximately 600 non-exempt employees worked shifts of four-hours or more in these California restaurants. The average hourly compensation for these employees is approximately \$8.50. This results in a potential exposure on this claim of \$7.4 million as follows: one hour's average wage (\$8.50) x 600 shift workers per day x 365 days x 4 years = \$7.4 million.

18. Penalties per Labor Code § 558. The Plaintiff alleges a "consistent policy" and "requirement" that meal and rest periods be missed. Assuming the truth of that allegation, and assuming one missed meal or rest period per shift worker during the class period, the amount in controversy on this claim would be as follows. In each two-week pay period during the year prior to the filing of the Action Wendy's employed approximately 1200 non-exempt employees in the State of California (21 per store). This results in a potential exposure on this claim of \$3.1 million as follows: \$100 penalty per § 558 x 1200 total non-exempt workers per pay cycle x 26 pay cycles x 1 year limitations period (C.C.P. § 340) = \$3.1 million.

19. Penalties per Labor Code §§ 203, 226, Punitive Damages, Attorney Fees. In addition to the foregoing, based on the alleged "consistent policy" and "requirement" that periods be missed and not paid, Plaintiff also alleges that he and putative class members:

- were "damaged" by failure to report on wage statements premium wages due for missed meal and rest periods, and therefore seek penalties of up to \$100 per pay period per person pursuant to Labor Code § 226(e);

- are entitled to thirty-days waiting time penalties for all former non-exempt California employees of Wendy's whose employment with Wendy's ended during the year prior to the filing of this action, pursuant to per Labor Code § 203;
- are entitled to punitive damages for alleged violation of Section 203 (Complaint ¶47)⁶, though the basis for such relief is unclear; and
- are entitled to recover their attorneys' fees and costs.⁷

The amount in controversy on these additional claims alone, also collectively satisfy the \$5 million threshold.

20. Aggregate. Totalling paragraphs 17 through 19, the aggregate amount placed in controversy by the claims of Plaintiff and the putative class exceeds \$5,000,000, excluding interest, costs and the value of injunctive relief.

WHEREFORE, the above-titled Action is hereby removed to this Court from the Superior Court of the State of California, County of Los Angeles.

Dated: October 2, 2009

JONES DAY

By: 

Mark D. Kemple

Attorneys for Defendant
WENDY'S INTERNATIONAL, INC.

⁶ Punitive damages also should be included as part of the amount in controversy in a civil action, though. *See, e.g. Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001).

⁷ Attorneys' fees also are included in the amount in controversy if recoverable by statute. *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010 (N.D. Cal. 2002).

EXHIBIT A

D311 Carl T. West

*X6024
92223*

FILED
Los Angeles Superior Court

AUG 31 2009

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
UNLIMITED CIVIL CASE

BC420922

ELLIOTT LEWIS, an individual, on behalf of himself, and all others similarly situated,

Case No.

Plaintiffs,

CLASS ACTION COMPLAINT FOR:

v.

WENDY'S INTERNATIONAL, INC., a Corporation; and DOES 1-20, inclusive,

Defendants.

1. Failure to Provide Rest Breaks Pursuant to Labor Code §226.7
2. Failure to Provide Meal Periods Pursuant to Labor Code §226.7
3. Waiting Time Penalties Pursuant to Labor Code §203
4. Failure to Provide Accurate Itemized Statements Pursuant to Labor Code §226
5. Unfair Competition Pursuant to Business & Professions §17200

Punitive Damages

[Demand for Jury Trial]

CIT/CASE: BC420922 LEA/DEF:
RECEIPT #: CCH65980092
DATE PAID: 08/31/09 03:33:56 PM
AMOUNT: \$355.00
0310

CHECK: 355.00
CASH:
CHARGE:
CARD:

CLASS ACTION COMPLAINT FOR DAMAGES

I

GENERAL ALLEGATIONS

Plaintiff ELLIOTT LEWIS, an individual, on behalf of himself, and on behalf of all others similarly situated, complains of defendants, and each of them, as follows:

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of plaintiff and all individuals who hold or held the position of hourly employees, who are employed by, or formerly employed by Defendant WENDY'S INTERNATIONAL, INC., ("Wendy's" or "Defendant"), within the State of California.

2. At least four (4) years prior to the original filing of this action and continuing to the present ("rest break liability period"), defendants have had a consistent policy of failing to provide hourly employees within the State of California, including plaintiff, rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the rest period was not provided, as required by California state wage and hour laws.

3. At least four (4) years prior to the original filing of this action and continuing to the present ("meal period liability period"), defendants have had a consistent policy of failing to provide hourly employees within the State of California, including plaintiff, meal periods of at least thirty (30) minutes per five (5) hours worked and failing to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the meal period was not provided, as required by California state wage and hour laws.

4. Plaintiff, on behalf of himself and all Class Members, brings this action pursuant to Labor Code §§ 201, 202, 203, 226.6, 226.7, and 558 seeking unpaid meal and rest period compensation, penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

1 B. Defendants

2 10. Defendant Wendy's International, Inc. owns and operates several locations in the
3 State of California. Defendant employed plaintiffs and similarly situated persons as non-exempt
4 hourly employees within the State of California. Plaintiff worked at the Wendy's location at
5 525 South Highland Spring, Beaumont, CA 92223. Plaintiff is informed and believes that
6 Wendy's owns and operates numerous stores in Los Angeles County, California.

7 11. The true names and capacities, whether individual, corporate, associate, or
8 otherwise, of defendants sued herein as Does 1 through 20, inclusive, are currently unknown to
9 plaintiffs who therefore sue defendants by such fictitious names under Code of Civil Procedure
10 § 474. Plaintiffs is informed and believes, and based thereon alleges, that each of the defendants
11 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
12 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names
13 and capacities of the defendants designated hereinafter as DOES when such identities become
14 known.

15 12. Plaintiff is informed and believes, and based thereon alleges, that each defendant
16 acted in all respects pertinent to this action as the agent of the other defendants, carried out a
17 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
18 defendant are legally attributable to the other defendants. Furthermore, defendants in all
19 respects acted as the employer and/or joint employer of plaintiff and the Class.

20
21 III

22 FACTUAL BACKGROUND

23 13. Defendant hires hourly employees who work in Wendy's locations. These
24 employees have not been provided rest periods for work periods of four (4) hours or major
25 fractions thereof and were not compensated one hours wage in lieu thereof.
26

1 14. Defendant also hires hourly employees who work in Wendy's locations who have
2 not been provided meal periods of not less than thirty (30) minutes per five (5) hours worked
3 and were not compensated one hours wage in lieu thereof.

4 15. Plaintiffs and the Class are, and at all times pertinent hereto, have been non-
5 exempt employees within the meaning of the California Labor Code, and the implementing rules
6 and regulations of the IWC California Wage Orders.

7 16. During the rest period liability period, plaintiffs and the members of the class
8 were regularly required to work in excess of three and one-half hours (3 1/2) without being
9 provided a rest period.

10 17. Defendants did not fully compensate the class for defendants' failure to provide
11 rest periods during the rest period liability period.

12 18. During the meal period liability period defendants have had a consistent policy of
13 failing to provide hourly employees within the State of California, including plaintiffs, meal
14 periods of at least thirty (30) minutes per four (5) hours worked and failed to pay such
15 employees one (1) hour of pay at the employees regular rate of compensation for each workday
16 that the meal period was not provided.

17 19. Defendants' requirement that plaintiffs and the class work through meal and rest
18 periods without paying legal compensation for failure to provide meal and rest periods during
19 the liability periods was willful and deliberate.

20 20. Defendants willfully failed to pay one hours wages in lieu of meal and rest
21 periods, when each employee quit or was discharged.

22 21. Plaintiffs and the Class are covered by the applicable California Industrial
23 Welfare Commission Occupational Wage Orders.

24 22. The claims of the plaintiffs and each member of the class individually do not
25 exceed \$75,000.

IV.

CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this action on behalf of others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiffs seek to represent sub-classes composed of and defined as follows:

a. All persons who are employed or have been employed as hourly employees by defendants in the State of California and since four (4) years prior to the filing of this lawsuit, have not been provided a rest period for every four (4) hours or major fraction thereof worked per day when his/her shift exceeded three and one (3 ½) hours, and was not provided compensation of one (1) hours pay for each day on which such rest period was not provided.

b. All persons who are employed or have been employed as hourly employees by defendants in the State of California and since four (4) years prior to the filing of this lawsuit, have not been provided a meal period for every five (5), and was not provided compensation of one (1) hours pay for each day on which such meal period was not provided.

c. All persons, who are employed or have been employed as hourly employees by defendants in the State of California and since four (4) years prior to the filing of this lawsuit failed to timely receive all wages owed upon termination or the separation of their employment.

24. Plaintiffs reserve the right under Rule 1855(b), California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

25. This action has been brought and may properly be maintained as a class action under the provisions of §382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

1 A. Numerosity

2 26. The potential members of the Class as defined are so numerous that joined of all
3 the members of the Class is impracticable. While the precise number of Class Members has not
4 been determined at this time, Plaintiff is informed and believes that defendants currently
5 employ, and during the relevant time periods employed, over 100 hourly employees.

6 27. Accounting for employee turnover during the relevant periods necessarily
7 increases this number substantially. Plaintiff alleges defendant's employment records would
8 provide information as to the number and location of all Class Members. Joinder of the
9 proposed Class is not practicable.

10 B. Commonality

11 28. There are questions of law and fact common to the Class that predominate over
12 any questions affecting only individual Class Members. These common questions of law and
13 fact include, without limitation:

14 (1) Whether defendant violated Labor Code §§226.7 and 512, the applicable
15 IWC Wage Orders, by failing to provide daily rest periods for four (4) hours or major fraction
16 thereof worked when the shift exceeded three and one-half (3 1/2) hours and by failing to
17 compensate employees one (1) hours wages in lieu of rest periods;

18 (2) Whether defendant violated Labor Code §§226.7 and 512, the applicable
19 IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to provide daily meal
20 periods for thirty (30) minutes when the shift exceeded five (5) hours.

21 (3) Whether defendant violated §§201-203 of the Labor Code by failing to
22 pay compensation for denied compensation due and owing at the time that any Class member's
23 employment with defendants terminated or ended;

24 (4) Whether defendant violated §17200 et seq. of the Business & Professions
25 Code by failing to provide meal and rest periods without compensation to hourly employees;

26 (5) Whether plaintiff and the Class are entitled to penalties under Labor Code
27
28

1 §558;

2 (6) Whether plaintiff and the Members of the Plaintiff Class are entitled to
3 equitable relief pursuant to Business & Professions Code §17200, et. seq.

4 **C. Typicality**

5 29. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
6 and all members of the Class sustained injuries and damages arising out of and caused by
7 defendants' common course of conduct in violation of laws, regulations that have the force and
8 effect of law and statutes as alleged herein.

9 **D. Adequacy of Representation**

10 30. Plaintiff will fairly and adequately represent and protect the interests of the
11 members of the Class. Counsel who represents Plaintiff are competent and experienced in
12 litigating large employment class actions.

13 **E. Superiority of Class Action**

14 31. A class action is superior to other available means for the fair and efficient
15 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
16 questions of law and fact common to the Class predominate over any questions affecting only
17 individual members of the Class. Each member of the Class has been damaged and is entitled to
18 recovery by reason of Defendant's illegal policy and/or practice of failing to compensate Class
19 Members at the legal overtime rates, denying Class Members rest periods without legal
20 compensation.

21 32. Class action treatment will allow those similarly situated persons to litigate their
22 claims in the manner that is most efficient and economical for the parties and the judicial
23 system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
24 management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS PURSUANT TO LABOR CODE § 226.7

AGAINST DEFENDANTS, AND EACH OF THEM, AND DOES 1 TO 5

33. As a separate and distinct cause of action, Plaintiff complains and realleges all the allegations contained in this complaint, and incorporate them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

34. Labor Code §226.7 requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked. Plaintiff and the class consistently worked for four (4) hours per shift with no rest breaks.

35. Defendants failed to provide plaintiff and others with rest breaks of not less than 10 minutes as required by the Labor Code during the relevant class period.

36. Pursuant to Labor Code §226.7, plaintiff and the class are entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial.

37. As a result of defendant's failure to provide rest periods, defendant has violated the applicable IWC Wage Order and Plaintiff is entitled to the penalties provided for by Labor Code § 558.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7

AGAINST DEFENDANTS, AND EACH OF THEM, AND DOES 6 TO 10

38. As a separate and distinct cause of action, Plaintiff complains and realleges all the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

1 39. Labor Code §226.7 requires an employer to pay an additional hour (1) of
 2 compensation for each meal period the employer fails to provide. Employees are entitled to a
 3 thirty (30) minute meal period for every five (5) hours worked. Plaintiff and the class
 4 consistently worked for five (5) hours per shift with no meal periods.

5 40. Defendants failed to provide plaintiff and others with meal periods of not less
 6 than 30 minutes as required by the Labor Code during the relevant class period.

7 41. Pursuant to Labor Code §226.7, plaintiff and the class are entitled to damages in
 8 an amount equal to one (1) hour of wages per missed meal period, in a sum to be proven at trial.

9 42. As a result of defendant's failure to provide rest periods, defendant has violated
 10 the applicable IWC Wage Order and Plaintiff is entitled to the penalties provided for by Labor
 11 Code § 558.

12 THIRD CAUSE OF ACTION

13 WAITING TIME WAGE CONTINUATION UNDER LABOR CODE § 203

14 AGAINST DEFENDANTS, AND EACH OF THEM, AND DOES 11 TO 15

15 43. As a separate and distinct cause of action, Plaintiff complains and realleges all
 16 the allegations contained in this complaint, and incorporates them by reference into this cause of
 17 action as though fully set forth herein, excepting those allegations which are inconsistent with
 18 this cause of action.

19 44. Numerous members of the class, including the named plaintiff, are no longer
 20 employed by defendants. They were either fired or quit defendants' employ.

21 45. The defendants' failure to pay wages, as alleged above was willful in the
 22 defendants and each of them knew wages to be due but failed to pay them, thus entitling
 23 plaintiff and the class wage continuation under Labor Code §203, which provides that an
 24 employee's wages shall continue until paid for a period of up to thirty (30) days from the time
 25 they were due.

26 46. Defendants have failed to pay plaintiff and others similarly situated a
 27
 28

1 sum certain at the time of termination or within seventy-two hours of their resignation, and have
 2 failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of the Labor
 3 Code §203, plaintiffs and the class are entitled to wage continuation in the amount of plaintiff's
 4 and others' daily wage multiplied by thirty (30) days.

5 47. As a result of the above conduct, plaintiffs and the class are entitled to punitive
 6 damages.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

9 **PURSUANT TO LABOR CODE SECTION 226**

10 **AGAINST DEFENDANTS, AND EACH OF THEM, AND DOES 16 TO 20**

11 48. As a separate and distinct cause of action, Plaintiff complains and realleges
 12 all the allegations contained in this complaint, and incorporates them by reference into this
 13 cause of action as though fully set forth herein, excepting those allegations which are
 14 inconsistent with this cause of action.

15 49. Defendants intentionally failed to furnish to plaintiff, upon each payment of
 16 wages, accurate itemized statements of actual total hours worked, as well as the applicable
 17 hourly rates in effect during the pay period and the corresponding number of hours worked at
 18 each hourly rate. Moreover, defendants failed to furnish to plaintiff accurate itemized
 19 statements indicating when, if at all, plaintiff received meal periods.

20 50. Defendants have failed to pay plaintiffs and others a sum certain at the time of
 21 termination or within seventy-two hours of their resignation, and have failed to pay those sums
 22 for thirty (30) days thereafter. Pursuant to the provisions of the Labor Code §203, Plaintiff is
 23 entitled to a penalty in the amount of plaintiff's and others' daily wage multiplied by thirty (30)
 24 days.

25 51. Plaintiff was damaged by these failures because, among other things, the failures
 26 led Plaintiff and others to believe that they were not entitled to be paid for violations of meal
 27

1 and rest period laws, although they were so entitled, and because the failures hindered them
 2 from determining the amounts owed to them. Plaintiff is entitled to the amounts provided for in
 3 Labor Code § 226(b).

4 **FIFTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE §17200**

6 **AGAINST DEFENDANTS, AND EACH OF THEM, AND DOES 21-25**

7 52. As a separate and distinct cause of action, Plaintiff complains and realleges
 8 all the allegations contained in this complaint, and incorporates them by reference into this
 9 cause of action as though fully set forth herein, excepting those allegations which are
 10 inconsistent with this cause of action.

11 53. The named Plaintiff, on his own behalf and on behalf of the general public, and
 12 on behalf of others similarly situated, brings this claim pursuant to Business and Professions
 13 Code §17200, et seq. The conduct of defendants as alleged in this Complaint has been and
 14 continues to be unfair, unlawful, and harmful to plaintiff, the general public, and the Plaintiff.
 15 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
 16 Code of Civil Procedure §1021.5.

17 54. Plaintiff is a person within the meaning of Business & Professions Code
 18 §17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
 19 and other appropriate equitable relief.

20 55. Business and Professions Code §17200, et seq prohibits unlawful and unfair
 21 business practices. Wage and hour laws express fundamental public policies. Paying employees
 22 for hours worked and providing employees with meal and rest breaks are fundamental public
 23 policies of this State and of the United States. Labor Code §90.5 (a) articulates the public
 24 policies of this State to enforce vigorously minimum labor standards, to ensure that employees
 25 are not required or permitted to work under substandard and unlawful conditions, and to protect

1 law-abiding employers and their employees from competitors who lower their costs by failing to
2 comply with minimum labor standards.

3 56. Defendants have violated statutes and public policies. Through the conduct
4 alleged in this Complaint, defendants, and each of them, have acted contrary to these public
5 policies, have violated specific provisions of the Labor Code, and have engaged in other
6 unlawful and unfair business practices in violation of Business & Profession Code §17200, et
7 seq., depriving plaintiff, and all persons similarly situated, and all interested persons of rights,
8 benefits, and privileges guaranteed to all employees under law.

9 57. Defendants' conduct, as alleged hereinabove, constituted unfair competition in
10 violation of §17200 et. seq. of the Business & Professions Code.

11 58. Defendants, by engaging in the conduct herein alleged, by failing to pay for all
12 wages and not providing proper meal and rest breaks, either knew or in the exercise of
13 reasonable care should have known that the conduct was unlawful. As such it is a violation of
14 §17200 et seq of the Business and Professions Code.

15 59. As a proximate result of the above mentioned acts of defendants, plaintiff and
16 others similarly situated have been damaged in a sum as may be proven. Unless restrained by
17 this Court, defendants will continue to engage in the unlawful conduct as alleged above.
18 Pursuant to Business & Professions Code, this Court should make such orders or judgments,
19 including the appointment of a receiver, as may be necessary to prevent the use or employment,
20 by defendants, their agents or employees, of any unlawful or deceptive practice prohibited by the
21 Business & Professions Code, and/or including but not limited to, disgorgement of profits which
22 may be necessary to restore plaintiff to the money defendants have unlawfully failed to pay
23 them.

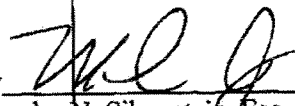
24 **RELIEF REQUESTED**

25 WHEREFORE, plaintiff prays for themselves against Defendants, jointly and
26 severally, as follows:
27
28

- 1 A. For compensatory damages in the amount of plaintiffs' and each class
2 members' hourly wage for each shift where rest period(s) were missed from
3 August 2005 to the present and continuing as may be proven;
- 4 B. For compensatory damages in the amount of plaintiffs' and each class
5 members' hourly wage for each shift where meal period(s) were missed from
6 August 2005 to the present and continuing as may be proven;
- 7 C. For waiting time wage continuation as prescribed by Labor Code Sec. 203 for
8 all employees who quit or were fired equal to their daily wage times thirty (30)
9 days;
- 10 D. For penalties pursuant to Labor Code §558 as alleged above;
- 11 E. An award of prejudgment and post judgment interest;
- 12 F. An order enjoining defendant and its agents, servants, and employees, and all
13 persons acting under, in concert with, or for it from providing plaintiffs with
14 proper meal rest breaks pursuant to Labor Code §§512, 226.7 and IWC 7-2001;
- 15 G. For restitution for unfair competition pursuant to Business and Professions
16 Code §17200, including disgorgement of profits, in an amount as may be
17 proven;
- 18 H. An award providing for payment of costs of suit;
- 19 I. An award of attorneys' fees; and
- 20 J. Such other and further relief as this Court may deem proper and just.

21
22 DATED: August 27, 2009

KESLUK & SILVERSTEIN

23
24 By 
Douglas N. Silverstein, Esq.
Michael G. Jacob, Esq.

25 Attorneys for Plaintiff ELLIOTT LEWIS, an
26 individual, on behalf of himself, and all
27 others similarly situated

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: August 27, 2009

KESLUK & SILVERSTEIN

By 

Douglas N. Silverstein, Esq.

Michael G. Jacob, Esq.

Attorneys for Plaintiff ELLIOTT LEWIS, an individual, on behalf of himself, and all others similarly situated

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Douglas N. Silverstein, Esq. SBN 181957 Michael G. Jacob, Esq. SBN 229939 KESLUK & SILVERSTEIN, P.C. 9255 Sunset Blvd., Suite 411 Los Angeles, CA 90069 TELEPHONE NO.: (310) 273-3180 FAX NO.: (310) 273-6137 ATTORNEY FOR (Name): <u>Plaintiff ELLIOTT LEWIS</u>		FOR COURT USE ONLY FILED Los Angeles Superior Court AUG 31 2009 John A. Clarke, Executive Officer/Clerk By <u>SHAUNYA WESLEY</u> Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. HILL ST. MAILING ADDRESS: 111 N. HILL ST. CITY AND ZIP CODE: LOS ANGELES 90012 BRANCH NAME: Stanley Mosk Courthouse		CASE NUMBER: BC420922 JUDGE: DEPT:	
CASE NAME: Lewis v. Wendy's, et al.		CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		Items 1-6 below must be completed (see instructions on page 2).	

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Five (5)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Michael G. Jacob, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SHORT TITLE: Lewis v. Wendy's, et al.

CASE NUMBER

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 7-9 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1., 2., 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Unlawful Detainer
Judicial Review

SHORT TITLE: Lewis v. Wendy's, et al.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: Lewis v. Wendy's, et al.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	<input type="checkbox"/> A6150 Other Writ / Judicial Review	2., 8.
Provisionally Complex Litigation	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
	<input type="checkbox"/> A6008 Claims Involving Mass Tort	1., 2., 8.
	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Miscellaneous Civil Complaints	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Miscellaneous Civil Petitions	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

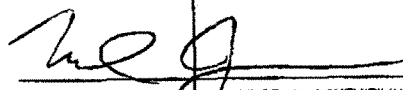
SHORT TITLE: Lewis v. Wendy's, et al.	CASE NUMBER
---------------------------------------	-------------

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE			ADDRESS:	
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			525 S. Highland Spring	
CITY: Beaumont	STATE: CA	ZIP CODE: 92223	7135 Sunset Blvd. Los Angeles, CA 90046	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the STANLEY MOSK courthouse in the CENTRAL District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: August 27, 2009


(SIGNATURE OF ATTORNEY/FILING PARTY)
Michael G. Jacob, Esq.

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Margaret M. Morrow and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

CV09- 7193 MMM (JCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

Elliott Lewis

DEFENDANTS

Wendy's International, Inc.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Douglas N. Silverstein, Esq.
 Kesluk & Silverstein, P.C.
 9255 Sunset Blvd., Suite 411
 Los Angeles, 90069
 (310) 273-3180

Attorneys (If Known)

Mark D. Kemple, Esq.
 Jones Day
 555 South Flower Street Fiftieth Floor
 Los Angeles, CA 90071
 (213) 489-3939

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

Aggregate amount in controversy

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No

☒ **MONEY DEMANDED IN COMPLAINT: \$** > \$5M.

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 28 U.S.C. § 1332(d) – jurisdiction under CAFA; putative class action between citizens of California and Corporate citizen of Ohio.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/ Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input checked="" type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities – Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities – Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐
- A. Arise from the same or closely related transactions, happenings, or events; or
-
- ☐
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
-
- ☐
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
-
- ☐
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Riverside and Los Angeles.

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Riverside	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved.X. SIGNATURE OF ATTORNEY (OR PRO PER): Mark D. Kemple Date October 2, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))